

APPLICANTS:

Martin Family, LLC
 213 EJ, LLC
 N4, LLC
 Mary Martin
 Forest Hill Industrial Airpark
 T4, LLC
 W4, LLC
 X-1, LLC
 Richard & Roberta Foard
 Gemcraft Commercial, LLC
 118-124 Industry Lane, LLC
 T-2, LLC
 118-124 Industry Lane, LLC
 129 Industry Lane, LLC
 Harford Associates General Partnership

BEFORE**THE****ZONING HEARING EXAMINER****FOR****HARFORD COUNTY****Consolidated Case Nos.: 130-160**

REQUEST: A request to rezone
 various parcels from GI General Industrial
 to CI Commercial Industrial District

HEARING DATE: April 11, 2007

ZONING HEARING EXAMINER'S DECISION

APPLICANTS:

Martin Family, LLC -	Case Nos. 130, 134, 148, 150
213 EJ LLC -	Case Nos. 131, 137, 142, 149
N4, LLC -	Case No. 132
Mary Martin -	Case Nos. 133, 136, 139, 140
Forest Hill Industrial Airpark -	Case Nos. 135, 141, 143, 144, 145, 147
T4, LLC -	Case No. 138
W4, LLC -	Case No. 146
X-1 LLC -	Case No. 151
Richard & Roberta Foard -	Case No. 152, 153
Gemcraft Commercial, LLC -	Case No. 154
118-124 Industry Lane, LLC -	Case No. 155
T-2, LLC -	Case No. 156
118-124 Industry Lane, LLC -	Case No. 157
129 Industry Lane, LLC -	Case No. 158
Harford Associates General Partnership -	Case No. 159, 160

Case Nos. 130 – 160 (Forest Hill Industrial Airpark Rezoning)

LOCATION: Forest Hill Industrial Airpark
Tax Map: 40 / Grid: 1F /
Parcel Nos: 364, 444, 470, 432, 421, 434, 460, 459, 416, 328, 52, 56, 53, 431,
362, 384, 451, 393, 377, 325, 149
Third (3rd) Election District

PRESENT ZONING: GI / General Industrial

REQUEST: Request pursuant to Section 267-12A of the Harford County Code to rezone 31 separate parcels within the Forest Hill Industrial Airpark, from GI/General Industrial zoning to CI/Commercial Industrial zoning.

TESTIMONY AND EVIDENCE OF RECORD:

The properties which are the subject of these rezoning applications are located within the Forest Hill Industrial Airpark on East Jarrettsville Road, Forest Hill, Maryland. All parcels are either in whole or in part zoned GI/General Industrial District. These applications request that all parcels be changed to CI/Commercial Industrial zoning. All applications have been reviewed by the Harford County Department of Planning and Zoning. The Department's recommendation addresses all the parcels and recommends similar treatment. The applications have been reviewed by the Planning Advisory Board, and all cases have been advertised for hearing on the same night. All applications appear to involve similar questions of law and fact, and it was proffered that the Applicants' testimony would be applicable to all cases. Accordingly, the joint motion of the Applicants to consolidate these cases for hearing and decision herein was granted.

The applications filed in all cases request rezoning on the basis of a change in neighborhood since 1997, or a mistake made during the 1997 Comprehensive Rezoning Process in zoning the subject properties as GI/General Industrial. Reasons to support the Applicants' arguments are generally set forth in their Applications as follows:

- * Original GI/General Industrial zoning was for a specific industrial user, with that user having now abandoned its intended use.
- * Prior to the 1997 Comprehensive Rezoning process both the Owner and the County believed that access to the subject properties would be from Jarrettsville Road (Old MD Route 23). However, access is now in fact available from (new) MD Route 23, with this access not being envisioned at the time of the 1997 Comprehensive Rezoning.
- * The Base Realignment and Closure process constitutes a change in the character of the neighborhood.
- * The subject properties are not appropriate for General Industrial uses and the most appropriate zoning classification is CI/Commercial Industrial.

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For the Applicants first testified John Robert Martin, who identified himself as the Manager of the Forest Hill Industrial Park. Mr. Martin was testifying as a representative of all Applicants in these consolidated cases. 27 of the properties for which applications have been filed are controlled by the Martin family. The interest of the other Applicants in having their properties rezoned is the same as that of the Martin family. Mr. Martin is authorized to speak for all Applicants.

According to Mr. Martin, the Applicants wish to rezone the parcels which now have GI/General Industrial zoning. In general, the development of the Airpark has gone from the west side (MD Route 24), to the east. The western half of the Airpark was always zoned GI/General Industrial. Mr. Martin noted that seven General Industrial zoned parcels will remain even if the present applications are all approved. Those seven parcels are not subject to this request, and those owners are not interested in a requesting a rezoning.

The Forest Hill Industrial Airpark begin its operations around 1984. In the late 1980's Old Line Plastics was interested in taking a major parcel of real estate within the Park for its manufacturing use, which would have required General Industrial zoning classification. That move did not take place, and the type of manufacturing use envisioned by Old Line Plastics was not located within the Airpark. Furthermore, Mr. Martin identified increased residential development around the Airpark over the past 20 years. Mr. Martin anticipates no significant change in the Airpark operation or existing users if the requested rezonings are granted.

Mr. Martin identified the present entrance to the Park as being from Jarrettsville Road. Mr. Martin's family, as developers of the Airpark, have made efforts over the past 20 years to obtain access to MD Route 23. The witness identified a letter dated February 27, 2007 to the Harford County Department of Planning and Zoning which described the many and varied attempts of the Martin family, and others, to secure approved access from MD Route 23. This letter was marked as Applicants' Exhibit 23 and is also Attachment No. 18 to the Staff Report. Until 2003 the State Highway Administration had consistently denied approval for an access to MD Route 23. In the year 2003 the State Highway Administration changed its position and began to actively consider the Martin family's application for access. As a result, according to the witness, the State Highway Administration has recently decided to allow access from Forest Hill Industrial Park onto MD Route 23.

Mr. Martin believes that, because of the new access, additional service-type users will be interested in locating within the Airpark property. With access from MD Route 23 to be connected to Commerce Drive, and with the additional service users which Mr. Martin envisions, he believes that the future development of the Airpark property for General Industrial uses is not appropriate. The County is changing in general, and the Forest Hill area is changing specifically, to service oriented and less intensive uses which are for the most part not appropriate in and do not need General Industrial zoned districts.

The witness noted that 27 of the properties now before the Board for rezoning had requested rezoning during the aborted 2005 Comprehensive Rezoning process. Those 27 requests applications had been approved by the County Council prior to County Executive veto of that legislation.

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Mr. Martin believes that Commercial Industrial zoning is more appropriate for the neighborhood and for the uses which he expects to want to locate within the Park.

Mr. Martin further noted that the Knights of Columbus, owner of a parcel along Commerce Drive, has expressed by letter dated April 10, 2007 its support of the requested rezonings.

Next for the Applicant testified Shawn Davis, Land Planner employed by Morris Ritchie & Associates.

Mr. Davis briefly described the zoning history of the subject properties. In 1957 the properties were first zoned AG/Agricultural. The properties were zoned M-2 in 1965, and were then given a GI/General Industrial zoning during the 1982 Comprehensive Rezoning.

During the 1989 Comprehensive Rezoning review, the property remained General Industrial. Mr. Davis points out that 1989 was approximately the time Old Line Plastics was envisioning moving into the eastern side of the Airpark.

In 1997 the Harford County Council denied the Applicants' request for CI/Commercial Industrial zoning, and elected to keep the property GI/General Industrial.

The primary land use designation in the area of the Industrial Park is industrial/employment.

Two main roads bisect the property – Industry Lane and Commerce Lane.

With the new access of MD Route 23, the eastern portion of the Industrial Park will change. A different traffic flow will develop and the property will change its orientation to MD Route 23. A majority of traffic will enter off MD Route 23, and less traffic will enter from Jarrettsville Road.

The current users in the Industrial Park fit more easily into the Commercial Industrial zoning category than General Industrial. In Mr. Davis' opinion the Park is not an Industrial Park. It is more of a Commercial Park. He anticipates that users similar to those at present will be attracted to the Park with access from MD Route 23, perhaps providing a larger variety of uses.

Mr. Davis believes that in 1997, during the Comprehensive Rezoning, the Council could not have been aware of the potential of a future link to MD Route 23. He also believes that General Industrial uses will have a greater impact on the area and surrounding uses than would development allowed under Commercial Industrial zoning. The requested rezoning will eliminate many of the more intensive industrial users which are now allowed. The Commercial Industrial zone is also consistent with the Harford County Master Land Use Plan.

In the witness's opinion, a mistake was made by the Harford County Council in 1997. The Council did not anticipate the future link to MD Route 23, 'there was no reason for the Council to believe that access off Route 23 would be allowed.' Therefore, a mistake was made.

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Furthermore, a few of the parcels under consideration for rezoning have split-zoning. Mr. Davis believes that these parcels should not have been given split-zoning and should have been zoned Commercial Industrial.

Mr. Davis defines the neighborhood as generally lying between Old Jarrettsville Road, MD Route 23, MD Route 24, and Dixie Lane to the east.

The Base Realignment and Closure Process (“BRAC”) will also mean additional employment in the area, and will result in the need for additional services which the Commercial Industrial is best suited to allow. BRAC itself constitutes an additional change in neighborhood.

Mr. Davis believes that appropriate zoning, in light of his findings, is Commercial Industrial.

Next testified Glen Gregory, a concerned neighbor who resides in Tuckahoe Farms. Mr. Gregory is concerned about the proposed location of the storm water management facility on the easternly side of the Forest Hill Industrial Park. Mr. Davis responded by saying the existing storm water management facility will remain. Mr. Davis does not believe any additional impact will result from storm waters onto the Tuckahoe Manor subdivision.

Next for the Harford County Department of Planning and Zoning testified Shane Grimm. Mr. Grimm and the Department generally agree with the neighborhood as defined by the Applicants. The subject parcels are part of the Forest Hill Industrial Airpark, classified in the Harford County Master Land Use Plan as an Industrial/ Employment zone. The proposed Commercial Industrial zoning conforms with the Master Land Use Plan.

Mr. Grimm explained that in general the existing buildings within the Airpark are of a similar style, containing a mixture of corporate offices, service providers, and construction related users. Surrounding zoning includes VB/Village Business, VR/Village Residential, and R-3/Urban Residential. The Industrial Airpark itself contains a mixture of CI and GI zoning.

The Department of Planning and Zoning does not, according to Mr. Grimm, agree that there has been a change in the neighborhood since the time of the last rezoning in order to justify the requested rezonings. The BRAC program simply contains too many unknowns in order to provide a basis for change. In the Department’s opinion the BRAC process has not caused a substantial change in the subject neighborhood.

The Department does, however, agree that a mistake was made at the time of the last Comprehensive Rezoning in maintaining the GI Zoning for the subject parcels. As early as 1991 discussions had taken place between the owners of properties in the Industrial Airpark and Harford County concerning this connection. By letter dated November 18, 1991 Harford County informed the then owners (who include many of the present owners), that the County would support the application for an Access Permit. The County was prepared to include the connection as an Amendment to the Harford County major road plan with a condition being that Commerce Road be constructed to business/industrial collector road standards.

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Nevertheless, and despite the County's position as stated in 1991, Commerce Road was not added to the County Master Road Plan.

By letter dated September 29, 1997, the Harford County Department of Public Works reaffirmed its support for the Route 23 connection. The County has since that time continued to support the connection to Route 23 (see Pages 6 and 7 of Staff Report). Most recently, the County has acknowledged support for the connection by letter dated March 24, 2004. In January 2006 the Martin family sent a letter to the State Highway Administration confirming the appraisal in the amount of \$86,000.00 for the break-in access fee, and committing to payment. By letter dated April 11, 2007 the State Highway Administration at last made clear its commitment to allow the Martin family an access onto MD Route 23:

"A SHA Access Permit will be issued once the engineer completes the plans to the satisfaction of SHA and all previously mentioned conditions imposed are met by Martin Family, LLC."

The Department of Planning and Zoning feels that the history of the Applicants' efforts, and of Harford County, to secure a connection to MD Route 23 are sufficient to justify a mistake in existing zoning:

"It is clear that the owners of the Airpark have desired a connection to MD Route 23 since 1989. Continuing efforts have been made since 1989 to have the connection approved. The County Council could not have known whether the SHA would eventually approve the connection of Commerce Road to MD Route 23." (See Page 7 of Staff Report)

In opposition testified Dennis Graham, who owns 18 Newport Drive. Located on Mr. Graham's property are a number of service businesses which rent space from him. Mr. Graham is afraid of the competition that his tenants will experience if the re-zoning goes through. The requested re-zoning will allow the type of service uses which will compete with his existing tenants. He is accordingly against the re-zoning.

The Planning Advisory Board has reviewed the requests and, by opinion dated March 30, 2007, recommends against the requests, stating:

"After reviewing information regarding the road connection and State Highway's approval for break in access onto MD 23, the PAB found no argument for mistake. PAB members noted that the permit for the break in access had not been granted. Therefore, PAB members disagreed with the staff report and voted 3-0 to deny the zoning change from GI to CI."

There was no additional evidence or testimony presented in opposition to the requests.

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APPLICABLE LAW:

Section 267-12 A. Zoning Reclassifications States:

“A. Application initiated by property owner.

(1) Any application for a zoning reclassification by a property owner shall be submitted to the Zoning Administrator and shall include:

(a) The location and size of the property.

(b) A title reference or a description by metes and bounds, courses and distance.

(c) The present zoning classification and the classification proposed by the applicant.

(d) The names and addresses of all persons, organizations, corporations or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.

(e) A statement of the grounds for the application, including:

[1] A statement as to whether there is an allegation of mistake as to the existing zoning and, if so, the nature of the mistake and facts relied upon to support this allegation.

[2] A statement as to whether there is an allegation of substantial change in the character of the neighborhood and, if so, a precise description of such alleged substantial change.

(f) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion.”

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The Applicant requests a change in the zoning of the property. An initial presumption exists which the Board of Appeals must consider in determining whether any such request should be granted:

“It is presumed that the original zoning was well planned, and designed to be permanent; it must appear, therefore, that either there was a mistake in the original zoning or that the character of the neighborhood changed to an extent which justifies the amendatory action.” See Wakefield v. Kraft, 202 Md. 136 (1953).

It is a “rudimentary” principle of zoning review that there exists a:

“. . . strong presumption of correctness of the original zoning and a comprehensive rezoning.” See Stratakis v. Beauchamp, 268 Md. 643 (1973).

In considering an:

“. . . application for reclassification, there must first be a finding of substantial change to the character of the neighborhood or a mistake in the comprehensive plan.” See Hardesty v. Dumphy, 259 Md. 718 (1970).

Furthermore, case law dictates that legally sufficient evidence must exist to show “substantial change” in the character of the neighborhood, and not a “mere change” which may very well fail to rise to the level of being based upon legally sufficient evidence to justify a finding of change to the neighborhood. See, generally, Buckel v. Board of County Commissions of Frederick County, 80 Md. App. 05 (1989)

Harford County Development Regulations § 267-9I, Limitations, Guides and Standards, is also applicable to this request and will be discussed below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants have presented a strong and persuasive argument that the most appropriate zoning for the subject parcels is Commercial Industrial, not its present General Industrial designation. Uncontradicted testimony is that approximately 20 years ago the property was appropriately zoned for a large manufacturing user, Old Line Plastics, which had indicated a desire to move onto the Airpark property. That move did not take place and, instead, the Forest Hill Industrial Airpark now supports a variety of office uses and service operations. According to the Applicants’ witness, most of the users of parcels in the Airpark property are one would find in the Commercial Industrial District.

The suggestion that the properties are more appropriately zoned Commercial Industrial is also indirectly supported by the fact that 30 property owners have joined in this application, all of whom request a Commercial Industrial zoning. Even the one property owner who objected to the request has uses on his property which are more typical of a Commercial Industrial District than a General Industrial one.

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Furthermore, testimony of the Applicants' witness was also that much of the surrounding properties are now residentially used. Such residential uses also mitigate against the manufacturing uses typically allowed in the General Industrial zone.

A review of the Harford County Development Regulations shows a striking contrast between the types of uses allowed in the two districts:¹

General Industrial:

Blast Furnace
Primary Smelting
Secondary Smelting
Fabricated Structural Metal
Fabricated Plate Work
Engines and Turbines
Construction and Related Equipment
Transportation Equipment
Tires and Inner Tubes
Reclaimed Rubber
Chemicals Products

In contrast, examples of uses which are allowed CI/Commercial Industrial District and not the GI/General Industrial District, are as follows:

Commercial Industrial:

Riding Stables
Theaters
Night Clubs and Taverns
Car Wash
Motor Vehicle Filling Station
Motor Vehicle Rental Leasing
Motor Vehicle Sales and Service
Speciality Shops
Agricultural Retail
General Merchandise Stores
Shoppers Merchandise Stores
Veterinary Clinics
Health Services and Medical Clinics

¹ This list is not all inclusive, but is for illustrative purposes.

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Accordingly, as can be seen by the above list of available uses, the Commercial Industrial District varies rather markedly from that of the General Industrial District with respect to the type of uses allowed in each. While many similar uses are allowed in both, the less intensive and less impactful nature of the Commercial Industrial District can easily be seen.

Accordingly, it is found that the most appropriate zoning for the subject parcels, in light of its history of use, development of surrounding neighbors, and uses allowed in each particular zoning district, is CI/Commercial Industrial.

However, determining that the most appropriate zoning of the property is CI only supplies the answer to the second part of the required findings. In reviewing the requested rezoning, one must first determine if a mistake occurred in the current Comprehensive Rezoning, or if change in the neighborhood has taken place since the time of the last Comprehensive Rezoning so as to justify a rezoning of the property. Accordingly, the requested zoning cannot be granted, even though Commercial Industrial may be the most appropriate zone, without determining whether a mistake in the 1997 Comprehensive Rezoning was made or change in the neighborhood has occurred.

In their arguments, the Applicants suggest that the Base Realignment and Closure Process has resulted in a “substantial change in the character of the neighborhood, which change was not fully anticipated and which occurred entirely after the most recent comprehensive re-zoning.”

While it may be true that in 1997 the current BRAC process was not envisioned, such a finding in and of itself cannot be the foundation for a finding of change in the neighborhood. Quite simply put, there has been no actual change as a result of BRAC. While discussions in the County have been frequent and loud concerning the possible implications of BRAC and the need for infrastructure improvements, there have been almost no identified actual physical changes in the County as a result of BRAC, and certainly none in the neighborhood of the subject properties. It is certainly not suggested by the Applicant that the Harford County population has increased as a result of BRAC, or that road standards have changed, that reconstruction has begun, or that schools have been redistricted or, in fact, there have been any physical objective circumstances that affect the lives of Harford Countians which is attributable to BRAC. Simply stating that BRAC will bring change does not mean that change has been brought.

A change in neighborhood cannot be shown by speculative and exaggerated commentary on what may or may not happen. BRAC is not a change, although one day it may bring change.

Both the Applicant and the Department of Planning and Zoning assert, however, that a re-zoning can be substantiated on the basis of a mistake having occurred in the 1997 Comprehensive Rezoning. That argument is based upon the recent approval of the State Highway Administration of an access between Route 23 into the Forest Hill Industrial Park, and the County Council’s inability to have taken this new entrance into account in the 1997 re-zoning. However, as stated in the Staff Report (at Page 7);

“The County Council could not have known whether the SHA would eventually approve the connection of Commerce Road to MD Route 23.”

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Furthermore, the Applicants' letter of February 27, 2007 to Anthony S. McClune (Applicants' Exhibit 23), states, *inter alia*;

"However, there is evidence that the connection was not, in fact, and could not have been, taken into account by the Council, because without the participation of SHA, it was not even a remote possibility."

That letter further states;

"Stated otherwise, the facts before the Council in 1997 supported the conclusion that no connection could occur."

Indeed, a review of the documentation submitted shows that the first actual commitment by SHA took place on April 10, 2007, or almost 10 years after the 1997 Comprehensive Re-Zoning. There is no indication that the Council in 1997 could have been aware that SHA would approve the connection some 10 years later and, in fact, both Staff and Applicants agree that the Council could not have known in 1997 of the future approval of the access.

Far from establishing a basis for mistake, the factual findings discussed above preclude such a finding. The standard of review is clear. If it can be shown:

"... that the assumptions or premises relied upon by the zoning body at the time of the Comprehensive Rezoning were invalid, error can be established by showing that at the time of the Comprehensive Rezoning the legislative body failed to take into account the existing facts, or projects or trends which were reasonably foreseeable, so that the rezoning action was premised initially upon a 'misapprehension'."

See Anne Arundel County v. Maryland National Bank, 32 Md. App. 437, 361 S.2d 134 (1976). See also Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975).

A conclusion based on full and accurate information which turns out to be incorrect is simply a case of 'bad judgment'. A conclusion based on information that is either incomplete or inaccurate at that time may be deemed to be erroneous. However, a conclusion based on full and accurate information which in the future happens to change, is not a mistake sufficient to justify a re-zoning.

Accordingly, it can be seen, and it is in fact admitted, that the Council's actions in 1997 were not based upon an inaccurate predicate. The Council did not have information before it that the access to MD Route 23 would be granted. In fact, just the opposite is true. The Council had no reason to believe that such an access point would be granted in 1997. As stated by the Applicants in Exhibit 27, the connection "... was not even a remote possibility at that time."

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The fact that the Council did not take into account the access is not an error. There was no reason for it to have taken it into account and consider a potential access to MD Route 23. Accordingly, a failure to do so is not an error, and there can be no finding of mistake sufficient to justify a rezoning of the subject parcels.

However, there is more than sufficient evidence to find a change in the neighborhood having occurred since the time of the last Comprehensive Rezoning based on the very factor argued by the Applicants as justification for a mistake. An access to Route 23 will now be developed into Forest Hill Industrial Park. It will be within the neighborhood as defined by the Applicants, as agreed to by the Department of Planning and Zoning, and as found herein to be accurate. The new access will result in a very significant change in the neighborhood as it will provide a secondary access to Forest Hill Industrial Airpark which, in fact, will no doubt function as the main access given its location on a major arterial road. The new access will re-orient the Airpark to Route 23, and will tend to attract increased service-oriented users more commonly found in Commercial Districts. It is indeed, hard to imagine a more significant change in the composition of a neighborhood than the one which the Airpark properties will experience. This represents a clear change in the neighborhood, and in fact is the very change which in large part functions to justify the finding of CI/Commercial Industrial as being the most appropriate zoning for the subject properties.

A review of Section 267-9I, Limitations, Guides and Standards, is applicable to the request and also result in no findings of concern. Those factors are discussed as follows:

- (1) *The number of persons living or working in the immediate area.*

The requested rezoning should have no impact on the people living or working in the area. Indeed, by changing the zoning district to allow less intensive uses, the impact may be beneficial to the surrounding residents. The change may also, by increasing service-oriented users within the Industrial Airpark, increase employment levels in the area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Facilities for pedestrians were not identified as an issue. Access to MD Route 23 should substantially improve traffic safety in the area by removing some vehicles from Jarrettsville Road, a narrow, secondary road.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

For reasons previously stated, it is found that commercial industrial uses are more consistent with present uses in the area, and accordingly should not impact the orderly growth of the neighborhood.

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- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such consequences have been identified.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The change from a industrial to commercial zoning should have no impact on these issues.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The rezoning use is consistent with generally accepted engineering and planning principles and practices.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The use is consistent with the Harford County Master Plan Use Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No natural features or opportunities for recreation and open space have been identified.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

It is noted, however, that the postulate of the Applicants which forms a basis of this finding change in neighborhood – the new access onto Route 23 – has not yet occurred. It would be unacceptable to grant a rezoning of a substantial number of parcels within the Forest Hill Industrial Airpark based on a change which may not occur in the, admittedly, unlikely event that the Martin Family does not elect to actually construct the access.

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Accordingly, this approval of the requested rezonings will not be effective until the Martin Family actually constructs the access as identified at the hearing and as described in the documentation provided. The Applicants have made a persuasive case that all approvals either are or will be issued for such an access, no issues have been identified which would preclude its construction, and that its future construction is not speculative, but will occur. For that reason it is assumed for the purposes of this opinion that the actual, physical change represented by the new access will be established. Nevertheless, change in the neighborhood will not occur until that is accomplished. Accordingly this rezoning recommendation will not be effective until that time.

CONCLUSION:

Accordingly, it is recommended that the requested rezoning of the indicated parcels located in the Forest Hill Industrial Airpark from GI/General Industrial to CI/Commercial Industrial be granted, and to be effective at the time of completion of the following:

1. Construction plans for the access are completed to the satisfaction of the State Highway Administration, as noted in its letter of April 11, 2007.
2. All conditions imposed on the Martin Family, LLC by the State Highway Administration have been met.
3. A State Highway Administration Access Permit is issued.
4. The Access is actually constructed and accepted by the State Highway Administration.

Date: June 6, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JULY 5, 2007